UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA	:	
	:	
v.	:	CASE NO.: 8:03-CR-77-T-30-TBM
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SAMI AMIN AL-ARIAN,	:	
SAMEEH HAMMOUDEH,	:	
GHASSAN ZAYED BALLUT,	:	
HATIM NAJI FARIZ	:	

CONSOLIDATED RESPONSE OF THE UNITED STATES TO DEFENDANT BALLUT'S MOTION TO DISMISS OR STRIKE COUNTS ONE THROUGH FOUR, NINETEEN, THIRTY-SIX THROUGH THIRTY-EIGHT, AND FORTY THROUGH FORTY-TWO, AND DEFENDANT HATIM NAJI FARIZ'S MOTION TO DISMISS COUNT FORTY-FOUR OF THE INDICTMENT

The United States of America by Paul I. Perez, United States Attorney, Middle District of Florida, submits the following consolidated response to (1) Defendant Ballut's Motion to Dismiss or Strike Counts One Through Four, Nineteen, Thirty-Six Through Thirty-Eight, and Forty Through Forty-Two (adopted by co-defendants Fariz and Hammoudeh, docs. 257, 314), and (2) Defendant Hatim Naji Fariz's Motion to Dismiss Count Forty-Four of the Indictment. Docs. 200 and 250.

Faced with a veritable cornucopia of allegations detailing more than a decade in the history of the Palestinian Islamic Jihad ("PIJ") and his relationship with that terrorist organization, defendant Ballut nevertheless complains that more is required. Eschewing fundamental principles of conspiracy law and misapprehending the applicable legal standard for assessing the sufficiency of an indictment, the defendant attempts to isolate himself from his seven co-defendants and raises arguments that are

both misguided and premature. As set forth below, because the indictment sufficiently informs the defendant of the charges against him and does not otherwise violate his constitutional rights, defendant BALLUT's "Motion to Dismiss or Strike Counts One through Four, Nineteen, Thirty-Six through Thirty-Eight, and Forty through Forty-Two" ("Motion to Dismiss"), Doc. 200, should be denied. For the reasons stated in Section L of this response, defendant Fariz's motion to dismiss Count Forty-Four should be denied.

A. Background

In February 2003, a federal grand jury charged defendant BALLUT and seven others with numerous crimes related to their alleged involvement in the PIJ, a designated foreign terrorist organization, including conspiracy to commit racketeering (Count 1); conspiracy to murder and maim persons outside the United States (Count 2); conspiracy to provide material support or resources to terrorists (Count 3); conspiracy to violate the International Emergency Economic Powers Act (Count 4); and violating the travel act by engaging in interstate conversations intended to promote extortion and money laundering (Counts 19, 36-38, and 40-42). D-1. The indictment is 121 pages long, including 70 pages detailing 256 separate overt acts spanning conduct from 1988 to December 2002.

Defendant BALLUT has moved to dismiss the charges and/or strike certain allegations against him on various grounds. The defendant often relies on the same grounds to challenge several different charges. In the interest of responding efficiently to the defendant's diffuse arguments, therefore, the government will address the

common grounds first, and then turn to the defendant's specific requests to dismiss each of the charges and/or strike certain allegations.

B. The Defendant Fundamentally Misunderstands the Legal Standard Applicable to a Motion to Dismiss

As a general matter, on a motion to dismiss an indictment before trial, review of an indictment is governed by Rule 7 (c)(1) of the Federal Rules of Criminal Procedure, which requires that "[t]he indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged." As the Eleventh Circuit has repeatedly held: "An indictment is sufficient 'if it: (1) presents the essential elements of the charged offense, (2) notifies the accused of the charges to be defended against, and (3) enables the accused to rely upon a judgment under the indictment as a bar against double jeopardy for any subsequent prosecution of the offense.'" United States v. Steele, 147 F. 3d 1316, 1320 (11th Cir. 1998) (quoting United States v. Dabbs, 134 F.3d 1071, 1079 (11th Cir. 1998)). "[O]rdinarily, the pleading of the allegations in terms of the statute is sufficient." United States v. Cadillac Overall Supply Co., 568 F.2d 1078, 1082 (5th Cir. 1978). The law, however, does not "compel that the indictment track the statutory language." United States v. Chilcote, 724 F.2d 1498, 1505 (11th Cir. 1984).

When adjudicating challenges to the validity and sufficiency of the indictment, courts construe the indictment as a whole. See United States v. Strauss, 285 F.2d 953, 955 (5th Cir. 1960). They also give the indictment "a common sense construction" and are guided by practical, rather than technical, considerations. United States v. Poirier,

321 F.3d 1024, 1029 (11th Cir. 2003) (indictment sufficient because a common sense interpretation of indictment indicated that relevant documents were confidential despite express statement that they were so)(quoting United States v. Gold, 743 F.2d 800, 812 (11th Cir. 1984)). Moreover, "[a]llegations in a conspiracy count need not be stated with the specificity required of a substantive count." See, e.g., United States v. Clark, 649 F.2d 534, 539 (7th Cir. 1981).

That the government could have drafted the indictment with more clarity does not render it insufficient. The test is whether the indictment conforms to minimal constitutional standards. Poirier, 321 F.3d at 1029 (citing United States v. Varkonyi, 645 F.2d 453, 456 (5th Cir. Unit A May 1981)).

The Federal Rules of Criminal Procedure allow a defendant to submit, by pre-trial motion, "any defense, objection, or request that the court can determine without a trial of the general issue." Fed. R. Crim. P. 12. An indictment challenged pretrial, therefore, is tested by its allegations, not by whether the government can prove its case. See Costello v. United States, 350 U.S. 359, 363 (1956). In other words, "a pretrial motion to dismiss the indictment cannot be based on a sufficiency of the evidence argument because such an argument raises factual questions embraced in the general issue." United States v. Ayarza-Garcia, 819 F.2d 1043, 1048 (11th Cir. 1987) ("Rule 12 is not intended to authorize 'speaking motions' through which the truth of the allegations in an indictment are challenged."); United States v. Triumph Capital Group Inc., 260 F. Supp. 2d 444, 458 (D. Conn. 2002) (denying motion to dismiss RICO conspiracy charge because defendants' argument that the government could not

prove the existence of an agreement between or among the defendants amounted to a challenge of proof, not to the sufficiency of the allegations). As the Eleventh Circuit has held, "[i]n judging the sufficiency of the indictment, the court must look to the allegations and, taking the allegations to be true, determine whether a criminal offense has been stated." United States v. Fitapelli, 786 F. 2d 1461, 1463 (11th Cir. 1986).

The defendant's motion is replete with claims that the government cannot "prove" the allegations in the indictment, and that the allegations are insufficient to "establish prima facie proof of the Defendant's guilt." See, e.g., Doc. 200 at ¶¶ 3, 17, 34, 50.[1] As such, the motion is, in large part, a thinly veiled challenge to the anticipated sufficiency of the evidence at trial, not the legal sufficiency of the indictment. As set forth below, the indictment sufficiently satisfies the legal standards just stated. Thus, the defendant's motion should be denied.[2]

C. The Defendant Grossly Misapprehends the Nature of the Conspiracy Charges

1. The Defendant May be Held Accountable for Co-conspirators' Conduct.

Each of the first four counts of the indictment is charged as a conspiracy. For each of these counts the defendant asks the court to dismiss the charge and/or strike

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[1]All of the cases cited on page 19 (regarding Count One) of the Defendant's motion discuss the sufficiency of evidence at trial, not the sufficiency of the allegations in the indictment. The Defendant also relies on these cases in his argument on page 25 for dismissing Count Two.

[2] Throughout his motion, defendant Ballut argues that the allegations in the indictment are insufficient to sustain the charge or the indictment does not establish a prima facie case. These are arguments a defendant might make in Florida state court. Rule 3.190(c)(4) of the Florida Rules of Criminal Procedure does not apply to federal prosecutions.

allegations because, he argues, there are insufficient allegations that reference him personally. It is axiomatic, however, that as a co-conspirator he may be held liable for the acts of the other members of the conspiracy that are undertaken during the course and in furtherance of the conspiracy. Wiborg v. United States, 163 U.S. 632, 657-58 (1896) ("[W]here two or more persons are associated together for the same illegal purpose, any act of declaration of one . . . may be given in evidence against the others."); United States v. Kissel, 218 U.S. 601, 608 (1910) ("[A]n overt act of one partner may be the act of all without any new agreement specifically directed to that act."); Pinkerton v. United States, 328 U.S. 640, 646-47 (1946) (each conspirator liable for substantive crimes committed by fellow co-conspirator during the course and in furtherance of the conspiracy). Thus, the actions of the defendant's co-conspirators are as sufficient as actions of the defendant himself to plead the conspiracy case against him.

2. The Conspiracy Charges Allege *Continuing* Crimes That Do Not Violate the Ex Post Facto Clause

The defendant repeatedly contends that this Court should dismiss the conspiracy charges against him or strike their allegations because they violate the Ex Post Facto Clause. He reasons that because he is charged with conspiratorial conduct occurring both before and after the enactment of the statutes under which he is indicted, the application of those statutes to him is unconstitutional. The defendant, however, misunderstands the application of the Ex Post Facto Clause to a *continuing* crime.

A conspiracy is deemed to continue as long as the purposes of the conspiracy have neither been abandoned nor accomplished and the defendant has not made an affirmative showing that the conspiracy has terminated. United States v. Gonzalez, 921 F.2d 1530, 1548 (11th Cir. 1991) (citing United States v. Coia, 719 F.2d 1120, 1124 (11th Cir.1983)). Thus, "[t]he *ex post facto* clause is not violated [] when a defendant is charged with a conspiracy that continues after the effective date of the statute." United States v. Hersh, 297 F.3d 1233, 1244 (11th Cir. 2002); United States v. Paradies , 98 F.3d 1266, 1284 (11th Cir. 1996) ("[T]he critical question is whether the law changes the legal consequences of acts *completed* before its effective date." (Citation omitted.)); United States v. Harris, 79 F.3d 223, 228 (2d Cir. 1996) ("It is well-settled that when a statute is concerned with a continuing offense, the Ex Post Facto clause is not violated by application of a statute to an enterprise that began prior to, but continued after, the effective date of the statute."); see also United States v. Terzado-Madruga, 897 F.2d 1099, 1124 (11th Cir. 1990) ("Since conspiracy is a continuous crime, a statute increasing the penalty for a conspiracy beginning before the date of enactment but continuing afterwards does not violate the ex post facto clause."); cf. United States v. Arnold, 117 F.3d 1308, 1313 (11th Cir. 1997) (to satisfy statute of limitations for a continuing crime, evidence must only establish that conspiracy continued into the limitations period); Gonzalez, 921 F. 2d at 1548 (same).

For conspiracies, like those alleged in Counts 1, 2, and 3 of the indictment against defendant, that do not require an overt act for completion, therefore, the indictment does not violate the Ex Post Facto Clause if it alleges that the conspiracy

continued past the date of enactment of the statute that made the conspiracy criminal. Cf. Gonzalez, 921 F. 2d at 1548 (citing Coia, 719 F.2d at 1124). For those conspiracies that require an overt act, the indictment need at most allege a single overt act occurring after the date of enactment. See Hersh, 297 F.3d at 1244-47 (no Ex Post Facto problem if evidence at trial establishes that any overt act occurred after the enactment of the pertinent statute). The indictment against defendant alleges both that defendant's conspiracies continued past the dates on which they became criminal and that conspirators conducted overt acts after those dates. Thus, the Court should reject the defendant's motion to dismiss on ex post facto grounds.

The Court also should reject the defendant's requests to strike any allegations concerning conspiratorial conduct that occurred before the date of enactment of the pertinent statutes. To strike portions of the indictment as surplusage under Federal Rule of Criminal Procedure 7(d), it must be clear that the challenged portions are not only "inflammatory and prejudicial" but also "not relevant to the charge."[3] United States v. Awan, 966 F.2d 1415, 1426 (11th Cir. 1992); United States v. Scarpa, 913 F.2d 993, 1013 (2d Cir. 1990) (regardless how prejudicial the allegation is to the defendant, it may not be stricken if admissible and relevant). This standard is "most exacting," id., and has been "strictly construed against striking surplusage." United States v. Rezaq, 134 F.3d 1121, 1134 (D.C. Cir. 1998).

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[3]Generally when adjudicating challenges to the validity and sufficiency of the indictment, courts construe the indictment as a whole. See United States v. Strauss, 285 F.2d 953, 955 (5th Cir. 1960). Thus, the challenged allegations must be considered in light of the rest of the indictment.

Because a conspiracy is a continuing crime, the government may use evidence of conduct occurring before the effective date of the statute to demonstrate the conspiracy's genesis, its purpose and its operation over time, and to prove the intent and purpose of the conspirators' later acts. United States v. Monaco, 194 F.3d 381, 386 (2d. Cir. 1999); United States v. Ferrara, 458 F.2d 868, 874 (2d Cir. 1972). The conduct need not have been criminal at the time. United States v. Smith, 464 F.2d 1129, 1133 (2d Cir. 1972) ("None of the cases permitting the court to consider pre-enactment behavior of the conspirators was based on the fact that it was violative of some other federal statute at the time."). Pre-enactment conduct, therefore, is highly relevant to establishing the conspiracies charged against the defendant. Moreover, inclusion of pre-enactment conduct in the indictment gives the defendant better notice of the charges against him and better enables him to defend against a major element of the crimes: the formation of the agreement to commit conduct that was later criminalized. This Court, therefore, should deny any request to strike pre-enactment conduct from the indictment.

D. Overt Acts 236, 240, 247 and 253 Should Not be Stricken Because They are Relevant to the Crimes Charged

The defendant contends that because the government acknowledged that it has misidentified one of the speakers in overt acts 236, 240, 247 and 253 as co-defendant AWDA, these paragraphs should be stricken and not considered by the Court in evaluating the sufficiency of the indictment. (D-200 at 12, 13, 28, 29.) This argument is addressed at length in the United States' Response to Defendant FARIZ's "Motion to

Strike as Surplusage Paragraphs 43(236), (240), (247), and (253) of the Indictment and to Dismiss Counts 35, 37, 41, and 43 of the Indictment. For the reasons set forth in that response, defendant BALLUT's motions as to these overt acts should be denied.

E. The Indictment does not offend the First Amendment

Defendant BALLUT fleetingly argues, without citing any legal authority, that allegations in the indictment pertaining to communications that "on their face" contain "protected speech without any criminal purpose" violates his First Amendment right to "free speech." The indictment, however, has not alleged any act of communication that contains "protected speech without any criminal purpose." Rather, the allegations pertaining to communications constitute evidence of the crimes charged. The government has fully addressed the First Amendment concerns in its response to defendant AL-ARIAN's Motion to Dismiss Counts One through Four. For the reasons set forth in that response, the defendant's argument is meritless.

F. Count One Sufficiently Alleges a RICO Conspiracy Pursuant to 18 U.S.C. §1962(d)

The RICO conspiracy statute provides: "It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section." 18 U.S.C. § 1962(d). To establish a RICO conspiracy violation at trial, the government must prove that the defendant objectively manifested, through words or actions, an agreement to participate in the conduct of the affairs of the enterprise. United States v. Shenberg, 89 F.3d 1461, 1471 (11th Cir. 1996). The government can prove the existence of this agreement in one of two ways:

(1) by showing an agreement on an overall objective, or (2) . . . by showing that a defendant agreed personally to commit two predicate acts and therefore to participate in a 'single objective' conspiracy.

United States v. Starrett, 55 F.3d 1525, 1544 (11th Cir. 1995) (quotation marks and citations omitted).[4]

The indictment here alleges that, from in or about 1984, and continuing until in or about the date of the indictment (February 2003), in the Middle District of Florida and elsewhere, the defendant and seven others, being persons employed by and associated with the enterprise (the PIJ), knowingly, willfully and unlawfully did combine, conspire, confederate and agree together and with each other and with other persons to violate 18 U.S.C. §1962 (c); that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of that enterprise, through a pattern of racketeering activity, as defined in the United States Code and consisting of seven enumerated predicate acts. Doc. 1 at Ct. 1 ¶ 26. The indictment further alleges that the activities of PIJ

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[4]The defendant states that the evidence must show that he agreed to participate personally "directly or indirectly, in two or more acts of racketeering." Motion to Dismiss at 20 (citing United States v. Caporale, 806 F.2d 1487, 1515 (11th Cir. 1986). The Supreme Court debunked that notion in Salinas v. United States, 522 U.S. 52, 64 (1997), stating that "[t]he RICO conspiracy statute . . . did not . . . work the radical change of requiring the Government to prove each conspirator agreed that he would be the one to commit two predicate acts." See also United States v. Glecier, 923 F.2d 496, 500-01 (7th Cir. 1991) (indictment need not allege that defendant himself agreed to commit predicate acts). Thus, although proof that the defendant himself agreed to commit two predicate offenses certainly would be sufficient to establish a conspiracy, Castro v. United States, 248 F. Supp. 2d 1170, 1177 (S.D.Fla. 2003), it is not necessary, id.

affected interstate commerce and that it was part of the conspiracy that each defendant agreed that a conspirator would commit at least two acts of racketeering in the conduct of the affairs of the enterprise. Id. at Ct. 1 ¶ 27.

The indictment further sets forth details of the "enterprise"–the PIJ–which includes a statement that the activities of the enterprise constituted an "ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objects of the enterprise." Id. at Ct. 1 ¶ 25. Count One also articulates the "Means and Methods of the Conspiracy," id. at Ct. 1, ¶¶ 28-42, and describes 255 Overt Acts relating to the conspiracy, id. at Ct. 1, ¶ 43.

These allegations are sufficient to allege a RICO conspiracy charge. See United States v. Diecidue, 603 F.2d 535, 545-48 (5th Cir. 1979) (affirming denial of motion to dismiss RICO conspiracy charge based on insufficiency of pleading); United States v. Triumph Capital Group, 260 F. Supp 2d 444, 458 (D. Conn. 2002) (denying motion to dismiss RICO conspiracy charge on grounds that indictment did not allege and government could not prove existence of agreement because indictment expressly alleged that the defendants conspired with each other to violate RICO law). Indeed, the government has provided additional information in the indictment that helps notify the defendant of the charges against him. A RICO conspiracy charge does not require the proof an overt act, Coia, 719 F.2d at 1124 (11th Cir.1983), yet the government has provided the defendant with hundreds of them.

The defendant argues that the RICO charge is still an "insufficient allegation," but his argument actually is a premature attack on the sufficiency of the government's

proof at trial. For example, on pages 19 and 20 of his motion, the defendant repeatedly refers to what the government must prove at trial, and states that

> In Count One of the Indictment, the allegations taken together as a whole that the Defendant GHASSAN BALLUT conspired with any of the other co-defendants to conduct and participate in the affairs of the PIJ as an enterprise through a pattern of racketeering activity are **insufficient to sustain the charge**.

Doc. 200 at 20-21 (emphasis added). As explained in Section B of this response, on a motion to dismiss before trial, the validity of the indictment is tested by its allegations, not what the government intends to prove at trial. In this case, the allegations are more than sufficient. See United States v. Reale, No. S4 96 CR 1069(DAB), 1997 WL580778, at *6-8 (S.D.N.Y., Sept. 17, 1997) (denying motion to dismiss RICO conspiracy because charge was valid on its face and defendants confused standards of pleading with standards of proof).

The defendant also argues that, because there is a passage of time between several of the allegations which name him personally, the government has not sufficiently alleged "continuity" of his participation in the conspiracy. Doc. 200 at 21-22. This claim ignores the fact that a conspiracy is a continuing offense and is presumed to continue unless it has terminated or the defendant has withdrawn. It also neglects the well-established principle that the overt acts pertaining to conduct of the defendant's co-conspirators may be ascribed to him. See Section C-1 of this response. In any event, courts have ruled that "continuity" is not an element of a RICO offense that must be alleged with particularity in the indictment. Rather, it is a necessary characteristic of the

evidence used to prove the existence of a pattern of activity. United States v. Palumbo Brothers, Inc. 145 F.3d 850, 877-78 (7th Cir. 1998); United States v. Boylan, 898 F.2d 230, 250 (1st Cir. 1990).

G. The Allegations Pertaining to Executive Order ("Exec.Order.")12947 Are Relevant to the Charges and, Therefore, Should not be Stricken

The RICO charge contains several references to the designation in 1995 via Executive Order 12947 of the PIJ as a "Specially Designated Terrorist" organization, and the conspirators' conduct in light of and in response to that order. The defendant complains that there are "no allegations" that he was a member of PIJ on or after January 23, 1995, the effective date of the Exec. Order 12947, or that the defendant's participation in PIJ prior to the effective date of the executive order assisted in conducting the affairs of the PIJ through a pattern of racketeering activity. These complaints again mistake sufficiency of proof for sufficiency of pleading. The defendant also misapprehends the continuing nature of a conspiracy and the liability for co-conspirator conduct.

The defendant also claims that allegations pertaining to Exec. Order 12947, declaring PIJ a Specially Designated Terrorist ("SDT"), should be stricken. See Doc. 200 at 22. The conspirators' conduct regarding the order, however, is highly relevant. Such conduct, for instance, raises an inference not only that they were already members of the PIJ enterprise, but that they realized that their furtherance of PIJ objectives was not innocent but part of a criminal conspiracy. In addition, the inclusion of information about the executive order designating the PIJ as a "terrorist" organization can cause the defendant no serious prejudice. The RICO charge is replete with

allegations both before and after the 1995 designation that demonstrate the "terrorist" activities of the PIJ, and the defendant's own actions and statements establish their commitment to terrorist objectives. For instance, the "Means and Methods" Section of Count One alleges that the conspiracy's operations included the following: the defendants secretly established terrorist cells, Doc. 1 at Ct. 1 ¶ 28; the defendants committed acts of violence and threats against Israel, including murders and suicide bombings, id. at Ct. 1 ¶ 29; and the defendants made public statements and issued press releases acknowledging acts of violence by PIJ, threatening future acts of violence, intending to promote and foster terrorism and to increase the prestige of the PIJ among terrorist organizations, id. at Ct. 1 ¶ 31. Thus, the defendant can establish neither that the references to the executive order are irrelevant nor that they are prejudicial such that they may be stricken from the indictment.

Defendant also complains in passing that several overt acts concerning the executive order were not themselves "illegal." Doc. 200 at 22. An overt act, however, need not itself be criminal in character. Yates v. United States, 354 U.S. 298, 334 (1957), overruled on other grounds by United States v. Burks, 437 U.S. 1 (1978); United States v. Jones, 642 F.2d 909, 914 (11th Cir. 1981). "The function of an overt act in a conspiracy prosecution is simply to manifest 'that the conspiracy is at work.'" Id. (quoting Carlson v. United States, 187 F.2d 366, 370 (10th Cir. 1951)). The overt acts cited in the Defendant's motion do just that–manifest that the PIJ conspiracy was at work.

Similarly, the defendant complains that the indictment lists overt acts relating to Exec. Order 12947 that could not themselves constitute crimes under 50 U.S.C. 1701 et seq. (proscribing penalties for violating Exec. Order 12947, see Count 4 of the Indictment). See Doc. 200 at 23. This argument is misplaced, as the acts are not charged as substantive offenses, but as manifestations of conspiratorial conduct in furtherance of the RICO conspiracy.

H. Count Two Sufficiently Alleges a Conspiracy to Murder and Maim, in violation of 18 U.S.C. §956(a)

In United States v. Wharton, 320 F.3d 526 (5th Cir. 2003), the Fifth Circuit explained that:

> [t]o obtain a conviction for conspiracy to kill in a foreign country[, in violation of 18 U.S.C. § 956(a)], the government must prove that: (1) the defendant agreed with at least one person to commit murder; (2) the defendant willfully joined the agreement with the intent to further its purpose; (3) during the existence of the conspiracy, one of the conspirators committed at least one overt act in furtherance of the object of the conspiracy; and (4) at least one of the conspirators was within the jurisdiction of the United States when the agreement was made.

Id. at 538 (applying these elements to review the sufficiency of the evidence).

Count Two of the indictment alleges *each* of the elements articulated in Wharton, and provides a detailed account of overt acts informing the defendant of the dates and places of each violent act involving killing or maiming of persons overseas, as well as overt acts describing the conspiratorial conduct of the defendants. See Doc. 1 at Ct. 2 ¶ 4, Ct. 1 ¶ 43. The defendant has more than adequate information to understand the nature of the charges against him and to prepare a defense to those charges. Viewing the indictment as a whole, and taking the allegations as true, Count Two sufficiently states a violation of 18 U.S.C. § 956(a).

In challenging the sufficiency of Count Two, the defendant repeats many of the arguments he articulated with respect to Count One. For instance, he relies upon the same "sufficiency of proof" cases to argue that the allegations have failed to sufficiently allege the elements of the crime. Doc. 200 at 25. He also again attempts to isolate the allegations which reference him personally, id., despite the fact that Count Two states that the defendant *and others*, from in or about 1988 to February 2003, "knowingly, unlawfully, and willfully, combined, *conspired*, confederated and agreed together and with each other. . . to murder and maim persons at places outside the United States" (emphasis added), see Doc. 1 at Ct. 2 ¶ 2. We have addressed these arguments in Section B.

In addition, the defendant raises two specific objections. First, he claims that the government has omitted language establishing that the defendant was "within the jurisdiction of the United States" when conspiring to commit the offense. Doc. 200 at 25. Count Two, however, clearly states that the defendants conspired to commit the offense "in the Middle District of Florida" and elsewhere – i.e., "within the jurisdiction of the United States." Doc. 1 at Ct. 2 ¶ 2.

Second, the defendant complains that the indictment charges him with conspiracy "to murder and maim" instead of conspiracy to commit acts that would "constitute the offense of murder. . . or maiming if committed in the special maritime and territorial jurisdiction of the United States," because 18 U.S.C. § 956 contains the latter language. Doc. 200 at 25. As already explained, however, the indictment need not always track statutory language, Chilcote, 724 F.2d at 1505, and a "common sense"

construction of the statute should be applied when determining whether the allegations are sufficient. Poirier, 321 F.3d at 1029. The indictment is sufficient if it presents the essential elements, notifies the accused of the charges to be defended against, and enables the defendant to rely upon a judgement under the indictment as a bar against double jeopardy, Steele, 147 F.3d at 1320, and it satisfies this standard regarding the challenged language.

The essential actus reus of the substantive offense under 18 U.S.C. § 956(a) is "murdering and maiming." See Wharton, 320 F.3d at 538. The defendant's desired language would merely further define those terms for purposes of the conspiracy charge. Thus, the indictment already sufficiently charges the pertinent element. See Hamling v. United States, 418 U.S. 87, 118-19 (1974) (use of term "obscenity" sufficient to charge violation of 18 U.S.C. § 1461 without further defining obscenity, as definition of term "does not change with each indictment"); see also United States v. Wicks, 187 F.2d 426, 428 (4th Cir. 1999) (failure to allege "essential element" of interstate commerce nexus under 18 U.S.C. § 513 did not render charge insufficient when indictment alleged possession of forged security of an "organization" and statutory definition of organization included nexus). Moreover, the defendant cannot claim that he is not on notice of the definition of murder and maim, as the indictment clearly cites 18 U.S.C. § 956, wherein the additional definitional language is recited. See United States v. Cefaratti, 221 F.3d 502, 508 (3d Cir. 2000) (rejecting under liberal construction standard argument that information insufficiently charged violation of 18 U.S.C. § 1957 because it strayed from statutory language, as the defendant "had only

to read the statutory section under which he was charged to understand" the allegation); see also United States v. Stefan, 784 F.2d 1093 (11th Cir. 1986) (although statute required proof that defendant had "knowingly and willfully" committed conduct, elimination of term "willingly" did not render indictment insufficient as distinction between the two was so slight that even without reference to statute defendant was on adequate notice of charges against him). And the detailed overt acts describing the date and place of specific acts of killing and maiming supply the defendant with sufficient information to prevent a subsequent prosecution for the same events.

I. Count Three Sufficiently Alleges a Conspiracy to Provide Material Support, in violation of 18 U.S.C. § 2339B

Title 18, United States Code, Section 2339B, provides criminal penalties for "[w]hoever, within the United States or subject to the jurisdiction of the United States, knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so." The statute further provides that the definition of "material support or resources" has the same meaning as in Section 2339A. 18 U.S.C. §2339B(g)(4). Section 2339A in turn defines material support and resources as "currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials." 18 U.S.C. 2339A(b).[5]

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[5]This section was amended by the USA PATRIOT Act in October 26, 2001, but those amendments are not at issue in the defendant's motion.

Count Three of the indictment sets forth all the essential elements of the offense and provides sufficient detail to put the defendant on notice of the crimes charged against him so that he can properly prepare a defense. Nothing more is required. Indeed, in United States v. Lindh, 212 F. Supp. 2d 541 (E.D. Va. 2002), the so-called "American Taliban" case, the court addressed the defendant's challenge to several Section 2339B conspiracy and substantive charges virtually identical to that in Count Three, see id. at 576 n. 83, and concluded that the charges were sufficient, as each count recited "all the essential elements of the 2339B offenses, the approximate dates on which Lindh allegedly committed the offenses, and the foreign terrorist organization he is alleged to have assisted," id. at 576.

The defendant nevertheless contends that the overt acts are insufficient to allege that he provided material support to the PIJ because: (1) the overt acts pertaining to the defendant describe only telephone communications; and (2) the "Means and Methods" section of the indictment is insufficient to inform him of the nature and cause of the accusations against him. This contention is without merit. Once again, the defendant mistakenly attempts to isolate discrete portions of the indictment to support his argument. As set forth above, the defendant is charged with being part of a conspiracy to provide material support; the government need not prove that he actually provided material support. Moreover, because Section 2339B does not require proof of an overt act to commit the offense of conspiracy to violate the section, the government is not required to allege or prove the commission of any overt act in connection with Count Three. See Salinas v. United States, 522 U.S. 52, 63 (1997)

(stating that an indictment need not contain allegations of an overt act unless specifically required by statute). The indictment, read as a whole and consistent with the principles set forth in Section B of this response, provides the defendant with more than enough information to prepare for trial. Indeed, the government has provided the defendant with much more detail than constitutionally required.

The defendant also erroneously claims that the government has incorrectly relied upon Exec. Order 12947 (1995), which listed the PIJ as a "specially designated terrorist organization," to show that the PIJ was a "foreign terrorist organization" as defined under 18 U.S.C. § 2339B. Doc. 200 at 26. As the defendant correctly points, out, only a declaration by the Secretary of State may render an organization a "foreign terrorist organization" for purposes of section 2339B. See 18 U.S.C. §2339B(g)(6). The defendant, however, simply overlooks the indictment's allegation that in October 1997, the Secretary of State, pursuant to the Antiterrorism and Effective Death Penalty Act, 8 U.S.C. §219, indeed designated the PIJ as a "foreign terrorist organization." Doc. 1 at Ct. 3 ¶ 3(t); see also id. at Ct. 1 ¶¶ 21, 22. It is this proclamation to which the allegation that PIJ was a "foreign terrorist organization" refers.

The defendant also moves to strike all allegations pertaining to the 1995 "SDT" designation as irrelevant to the 2339B conspiracy. That designation, however, is relevant for all the reasons set forth in Section F of this response (addressing the defendant's challenges to the RICO conspiracy charge). The history of the PIJ, and its official recognition as a terrorist organization, whether in 1995 or 1997, are relevant to understanding the existence, purpose and conduct of the conspiracy in which the

defendant is charged. The defendant again complains that pre-1997 acts, such as those regarding the 1995 designations, violate the Ex Post Facto Clause because the conspiracy to provide material support was not criminal until the 1997 designation. Count Three, however, only refers to the 1995 "SDT" designation and other pre-1997 events in the "Means and Methods of the Conspiracy" section,[6] while explicitly incorporating overt acts occurring only after the 1997 "FTO" designation (overt acts 197 through 255). In any event, because the allegations pertaining to the 1995 designation process and other events prior to October 1997 are relevant and admissible, to show the contours, etc., of the conspiracy, see Section C-2 of this response, they should not be stricken as surplusage. Hersh, 297 F.3d at 1245; Awan, 966 F.2d at 1426.

J. Count Four Sufficiently Alleges a Conspiracy to Make and Receive Contributions of Funds, Goods, and Services to or for the Benefit of SDTs, in violation of 18 U.S.C. § 371

Count Four charges the defendant with a conspiracy to commit an offense under 50 U.S.C. § 1701 et seq. (IEEPA). The IEEPA prohibits, inter alia, the violation of "any . . . order . . . issued under this chapter," including those orders identifying hostile entities

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[6] In United States v. Jimenez, 824 F. Supp. 351 (S.D.N.Y. 1993), the court analyzed a similar challenge to information in the "Means and Methods" portion of a conspiracy charge. Id. at 370. After discussing the general rule that motions to strike supposed surplusage are rarely granted, id. at 369, the court held that since the "Means and Methods" portion of the indictment explained the "alleged structure" of the conspiracy and the "alleged roles" of each defendant, it contained information that was both relevant and admissible, and therefore not subject to a motion to strike. Id. at 370. Likewise, the "Means and Methods" section of the instant indictment describes the general framework and background for the charged conspiracy. The court also explained that although the "Means and Methods" section was not essential to the indictment, an "indictment need not be limited to statements specifying the elements charged but may, and generally does, describe the nature of the conspiracy charged and enumerate overt acts." Id. at 370.

with which interaction should be limited. As the Lindh court explained:

> The IEEPA is a relatively recent addition to this country's arsenal of sanctions to be used against hostile states and organizations in times of national emergency. For much of the twentieth century, this country's sanctions programs were governed by the Trading with the Enemy Act (hereafter "TWEA"), enacted in 1917. . . . Congress changed this statutory scheme in 1977 to limit TWEA's application to periods of declared wars, but created IEEPA to provide the president similar authority for use during other times of national emergency. . . .

212 F. Supp. 2d at 559. In January 1995, then-President Clinton, acting pursuant to the IEEPA, issued Exec. Order 12947, declaring a national emergency to deal with the extraordinary threat posed by foreign terrorists who disrupt the Middle East peace process. That order explicitly prohibits "any transaction or dealing by United States persons . . .in property or interests in property of the persons designated pursuant to this order. . . , including the making or receiving of any contribution of funds, goods, or services to or for the benefit of such persons." Exec. Order No. 12947, 60 Fed. Reg. 5,079 (1995). The order designated PIJ, AWDA and SHALLAH as SDTs, and dealings with them, therefore, became a violation of the IEEPA. Implementing regulations further prohibited conspiracies to commit acts in violation of Exec. Order 12947. See 31 C.F.R. § 595.205. The indictment thus specifically charges the defendant with violating the IEEPA by conspiring, in violation of Exec. Order 12947, to make contributions of funds, goods and services to the PIJ, AWDA, and SHALLAH.

Count Four states the elements and provides the defendant with explicit and detailed references to the IEEPA, Exec. Order 12947, the implementing regulations, and 18 U.S.C. § 371. Thus, it is sufficient on its face.

Despite this fact, the defendant again rehashes the same misguided challenges to Count Four as he raised with respect to Counts One through Three. He challenges the anticipated strength of the government's proof, not the sufficiency of the allegations, complaining that several overt acts only suggest his knowledge "after the fact" of particular happenings. Doc. 200 at 30. We addressed that argument in Section B of this response and repeatedly in Sections F through J. [7]

He, again, complains that he is not properly personally referenced in the charge. Doc. 200 at 29. We addressed that argument in Section C-1 of this response. He, again, raises an ex post facto challenge. Doc. 200 at 29. We addressed that argument in Section C-2 of this response. Finally, he moves to strike overt acts 226, 240, 247 and 253. We address that argument in the United States' response to Defendant FARIZ's "Motion to Strike as Surplusage" those acts.

K. Counts Thirty-Six Through Thirty-Eight and Forty Through Forty-Two Charging Violations of 18 U.S.C. § 1952 Are Legally Sufficient

Next, defendant Ballut attacks the legal sufficiency of Counts Thirty-Six through Thirty-Eight and Forty through Forty-Two. In reality, Ballut's argument is again primarily a sufficiency-of-the-evidence argument, which should be denied out-of-hand at this point as premature.

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[7]A conspiracy, of course, may be proved by circumstantial evidence, Hansen, 262 F.3d at 1246, which could conceivably include discussions of illicit contributions after the fact. In any event, the indictment alleges that the defendant agreed to the objectives of the conspiracy and participated in the conspiracy long before he had the relevant discussions about contributions to the PIJ (overt acts 226, 240, 247, 253); these discussions thus serve to amplify and round out the defendant's knowledge of the conspiracy.

The six counts in question all charge a violation of 18 U.S.C. § 1952, commonly known as the Travel Act. The Travel Act provides in relevant part:

> (a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to --
>
> (1) distribute the proceeds of any unlawful activity; or
>
> (2) commit any crime of violence to further any unlawful activity; or
>
> (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform an act (described in one of the three above-mentioned paragraphs.

commits a violation of this statute. With respect to the definition of "unlawful activity," Section 1952(b)(2) defines it to include "extortion . . . in violation of the laws of the State in which committed or of the United States," and Section 1952(b)(3) defines it to include "any act which is indictable under . . . section 1956 . . . of this title."

With respect to each and every Travel Act count charged in the indictment in this case (Counts Five through Forty-Four), the indictment alleges the following:

> (1) the named defendants did knowingly and willfully use a facility (facsimile or telephone conversation) in interstate or foreign commerce;
>
> (2) that the defendants did so with the intent to:
>
> (a) commit any crime of violence to further the unlawful activity; or
>
> (b) otherwise promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of said unlawful activity; and

(3) thereafter, the defendants committed an act to promote, manage, establish, or carry on such unlawful activity.

In accordance with Sections 1952(b)(2) and (3), the indictment alleges that the "unlawful activity" is "extortion and money laundering" in violation of the laws of the State of Florida and the United States. Each use of a facility in interstate or foreign commerce is also alleged and incorporated by reference to a corresponding Overt Act from Count One as well as the subsequent communication relating thereto. With respect to defendant Ballut, the corresponding relationship is as follows:

Count	Overt Act
36	238
37	240
38	242
40	244
41	247
42	251

The general legal standards governing the sufficiency of indictments have been set forth previously in this response in Section B. In essence, those standards boil down to a "notice" requirement. But, given the structure of the indictment for purposes of satisfying the terms of the "notice" requirement, the Court is not limited to a consideration of the allegations found only within the substantive counts themselves. An examination of Count One is appropriate.

Paragraphs 24 and 25 of Count One of the indictment describe the PIJ enterprise and its overall criminal objectives. Paragraph 26(d) alleges that the Travel

Act violations were part of the pattern of racketeering through which the defendants and other agreed to participate in the conduct of the affairs of the PIJ enterprise. At the very same time, paragraphs 26(b) and 26(c) allege that acts of extortion and money laundering respectively were part of the pattern of racketeering activity which was the overall object of the RICO conspiracy. Paragraphs 26(a) and 26(e) allege acts of murder, and murder is a crime of violence as provided for in 18 U.S.C. § 16. Paragraphs 28 through 42 allege the means and methods of the RICO conspiracy. Although not legally required, Paragraph 43 sets forth 256 overt acts committed in furtherance of that conspiracy, including overt acts 238, 240, 242, 244, 247 and 251. Finally, in a somewhat redundant fashion, overt act 256 specifically incorporates the acts alleged in Counts Two through Fifty as additional overt acts of the RICO conspiracy. Therefore, when the whole indictment is read in a common sense fashion, the indictment supplies plenty of information to the defendant about the "nature and cause of the accusations" to allow him to prepare his defense.

Defendant Ballut mounts additional attacks on the legal sufficiency of the Travel Act counts. Again these arguments actually attack the factual sufficiency. Ballut says he did not always initiate the charged telephone call. Doc. 200 at 14. With respect to Count Thirty-Six, Ballut says there is no allegation that he did not receive the information discussed from a legitimate news source. Doc. 200 at 15. With respect to Counts Thirty-Seven and Forty-One, Ballut says the indictment alleges that he and co-defendant Fariz were discussing a transaction with a person the government has acknowledged it misidentified as co-defendant Awda. Doc. 200 at 16 and 17. With

respect to Count Thirty-Eight, Ballut explains that he and co-defendant Fariz were discussing facts known to the government. Doc. 200 at 16. As to Count Forty, Ballut explains that he and co-defendant Fariz were discussing "a matter of public date and speculation." Doc. 200 at 16. As to Count Forty-Two, Ballut asserts there is no allegation that he knew of co-defendant Fariz's efforts to contact Ramadan Abdullah Shallah before the fact or facilitated co-defendant Fariz's attempt to make such a contact. All these complaints amount to nothing more than a challenge to the government to debate in pre-trial pleadings the factual sufficiency of the government's case, a case which has not yet even been presented at trial. Their true purpose is to coax free discovery from the government.

As has been argued at length elsewhere in the pleadings, the misidentification of the person with whom co-defendant Fariz was talking in Counts Thirty-Five (overt act 236) and Counts Forty-Three (overt act 253) has no legal impact on the legal sufficiency or factual sufficiency of Counts Thirty-Seven and Forty-One. First, there has been no counter-allegation that it was not defendant Fariz having the conversation with the misidentified person. Second, the allegations in those two counts makes it quite clear of the following: (a) co-defendant Fariz knew the identity of the person with whom he was speaking; (b) Ballut knew whom Fariz was talking about when they discussed Fariz's conversations with the misidentified person; and (c) the subject matter of all four conversations (Counts Thirty-Five, Thirty-Seven, Forty-One and Forty-Three) has remained the same. The factual statements in those counts allege at least inferentially that defendants Fariz and Ballut were discussing the secretive transfer of

money from the United States to a place outside the United States to support PIJ activities, which, if proved at trial, is money laundering, in violation of 18 U.S.C. § 1956(a)(2) or (h).

Moreover, at a more basic level, Ballut mis-comprehends the reach of the Travel Act. It might be useful to discuss cases interpreting the Travel Act so that the Court will be satisfied that the indictment is legally sufficient and provides defendant Ballut with all the essential facts he needs to prepare his defense. In response to a defense argument that the use of the interstate facility was isolated, minimal, inconsequential and nonessential to the unlawful activity, the Fifth Circuit held there is not requirement that the use of an interstate facility be essential to the unlawful activity; it is enough that the use of the facility makes easier or facilitates the unlawful activity. United States v. Perrin, 580 F.2d 730, 735-36 (5th Cir. 1978), aff'd, Perrin v. United States, 444 U.S. 37 (1979). The use of a facility which is incidental to some criminal activity need not form the essence of the unlawful activity in order to provide a basis for a Travel Act violation. United States v. Tonry, 633 F.Supp. 643, 646 (E.D. La. 1986). To facilitate unlawful activity within the meaning of Section 1952(a)(3) only means to make the unlawful activity "easy or less difficult." United States v. Rogers, 788 F.2d 1472, 1476 (11th Cir. 1986). A conviction for aiding and abetting under the Travel Act does not require proof that the defendants knew or intended that interstate facilities be used; the government need only prove that the defendants knew they were facilitating an unlawful activity. United States v. Broadwell, 870 F.2d 594, 608-09 (11th Cir. 1989). The government does not have to prove that the underlying state offense was committed. United States

v. Romano, 482 F.2d 1183, 1991 (5thCir. 1973). What the government does not have to prove does not have to be alleged in the indictment.

A "thereafter" act must be alleged in the indictment and proved at trial, but, generally speaking, it is sufficient merely to track the statutory language. United States v. Hagmann, 950 F.2d 175, 183 (5th Cir. 1991), cert. denied, 506 U.S. 835 (1992). The "thereafter" act need not itself be unlawful. United States v. Jones, 642 F.2d 909, 913 (5th Cir. 1981).

While a "thereafter" act must be alleged and proved, a Travel Act violation can be established based on a single telephone call. In United States v. Pecera, 693 F.2d 421, 424 (5th Cir. 1982), to facilitate a bribery scheme, the defendant called the recipient of the bribe and they discussed the details and terms of the unlawful arrangement. In affirming the defendant's conviction, the Fifth Circuit held that the single conversation facilitated, made easier, and furthered the bribery scheme. "Indeed, the entire conversation consisted of details involving the attempted bribery, and the scheme was undoubtedly furthered by the lengthy discussion of these details." Id. at 424. Similarly, a single telephone call placed to order a map was held to support a Travel Act violation involving commercial bribery. Perrin, 580 F.2d at 736. The Fifth Circuit in Perrin further held that there was no requirement that the use of the interstate or foreign facility be essential to the scheme -- it is enough that the use of the facility facilitates the unlawful activity. Thus, the import of these cases is that the placing or receipt of the telephone call can be the "use" of the facility, and the substantive conversation which immediately follows can serve as the "thereafter" act, depending, of

course, on the content of the conversation and the other facts in the case. Each Travel Act count alleges a communication subsequent to the use of the facility. Thereafter, the indictment is legally sufficient with regard to the "thereafter" element.

A Travel Act violation is distinct from the crime of attempt to commit the unlawful activity facilitated or furthered. It simply punishes individuals for using a facility to further certain unlawful activity. United States v. Jenkins, 943 F.2d 107, 173 (2d Cir. 1991). So, unlike an attempt, the Travel Act does not require proof that the defendant took a "substantial step" to further the unlawful activity. Id. at 173. Therefore, it follows that the indictment need not allege facts establishing an attempt to commit the unlawful activity.

Thus, all of Ballut's complaints, discussed above, are nothing more than an attempt to convince the Court to graft non-existent elements onto the Travel Act and should be rejected. Accord, Perrin, 580 F.2d at 733.

Finally, Ballut argues that Count Nineteen is barred by the five year statute of limitations found in 18 U.S.C. § 3282 because the indictment alleges that the crime occurred on or about May 24, 1995. Unfortunately for Ballut, the government is relying on the statute of limitations found in 18 U.S.C. § 3292, which tolls the applicable statute of limitations for a period of up to three years where the government informs the Court that evidence is in a foreign country and the government has requested it. That was done in this case. The government submitted a request to the Israeli authorities for certain evidence pursuant to a Mutual Legal Assistance Treaty (MLAT) in March, 2000. The MLAT request was submitted to the Court and the Court entered an order holding

that 18 U.S.C. § 3292 applied. The documents received thus far from the Israeli authorities have been described in Section C of the Discovery Index. Production of evidence from Israel continues. See generally United States v. Torres, 2003 WL 132950 (11th Cir. 2003) (the Eleventh Circuit discussed the meaning of "final action" in 18 U.S.C. § 3292). Thus, due to the applicability of 18 U.S.C. 3292, defendant Ballut's motion to dismiss Count Nineteen should be denied.

L. Count Forty-Four Sufficiently Alleges a Violation of 18 U.S.C. §§ 1952(a)(2) and (3) as to Defendant Hatim Naji Fariz's Motion to Dismiss Count Forty-Four of the Indictment

Defendant Fariz attacks the legal sufficiency of Count Forty-Four, which alleges that he committed a "Travel Act" violation. Count Forty-Four incorporates the acts alleged in Overt Act 255. Defendant Fariz makes two arguments. First, he claims that Count Forty-Four is legally deficient because Overt Act 255 "fails to allege facts that constitute the elements of 18 U.S.C. § 1952(a) and (3)." Doc. 250 at 2. Second, Fariz asserts that Count Forty-Four is legally deficient because (again) Overt Act 255 "fails to allege facts that adequately put Mr. Fariz on notice as to how this communication constitutes intent to commit a crime of violence or further extortion or money laundering, nor how this communication related to the purpose or goal of extortion or money laundering." Doc. 25 at 2. The general legal standards governing the sufficiency of indictments has been set forth previously in this response in Section B. Based on the applicable law cited therein, neither of these arguments has any legal or factual merit and should be denied.

First, as noted above, defendant Fariz has not alleged that the indictment fails to allege some essential element of the Travel Act. Each and every Travel Act violation listed in the indictment correctly sets forth the essential elements. Second, defendant Fariz also does not allege that Count Forty-Four does not contain essential facts constituting the offense as required by Rule 7(c)(1) of the Federal Rules of Criminal Procedure. He acknowledges that Count Forty-Four incorporates the facts alleged in Overt Act 255.

Instead, he imaginatively shifts his attack to the information provided in Overt Act 255. Overt Act 255 reads as follows:

> (255) On or about December 9, 2002, HATIM NAJI FARIZ, who was in the Middle District of Florida, had a telephone conversation with a magazine reporter who was outside the State of Florida. HATIM NAJI FARIZ complained that a recent article regarding a terrorist attack in Hebron improperly failed to attribute the attack to the PIJ. HATIM NAJI FARIZ then stated that he was about to start working on his Ph.D. in computer engineering at the University of South Florida.

In an argument reminiscent of arguments made in his motion for a bill of particulars, Fariz complains that the information set forth in Overt Act 255 (which is just a summary of the substance of the telephone call, the full conversation of which he has in his possession) does not inform him "how this communication constitutes intent to commit a crime of violence or further extortion or money laundering," nor "how this communication related to the purpose or goal of extortion or money laundering." Doc. 250 at 2. No matter how detailed the indictment is, defendant Fariz claims it does not give him necessary information. This motion is designed to coax disclosure of

evidentiary detail from the government and is not truly a legal attack on the indictment. "How" the government proposes to prove a crime or "how" certain acts by a defendant furthered criminal activity are not proper subjects for a bill of particulars. United States v. Bin Laden, 92 F. Supp.2d 225, 236, 243-44 n.22 (S.D.N.Y. 2000). And, if this type of information need not be provided in a bill of particulars, a fortiori, it need not be stated in the indictment itself.

But, the indictment DOES allege in a general way how this conversation furthers and facilitates extortion and money laundering. As explained in response to defendant Ballut's attack on the Travel Act counts in which he is named as a defendant, each Travel Act count is alleged to be an overt act in the RICO conspiracy (Overt Act 256), and, indeed, all four conspiracies listed in the indictment. Paragraphs 28-42 of Count One set forth the means and methods of the RICO conspiracy. To explain, Paragraph 29 alleges that enterprise members would and did commit acts of violence with the intent to force Israel and its inhabitants to cede land. In Overt Act 255, defendant Fariz discusses such an incident which had just occurred (described in Overt Act 254). Paragraph 31 alleges that enterprise members would make public statements and issue press releases proclaiming responsibility for such acts of violence. An extortion requires a threatening communication and the statements made as described in Paragraph 31 are those threatening communications. In Overt Act 255, defendant Fariz is alleged to have called a reporter for a publication to complain that the reporter's publication attributed the responsibility for the crime of violence to the wrong terrorist group! The purpose of the call was to seek a correction. According to other

allegations in Paragraph 31, another purpose of the claims of responsibility was to increase the prestige and standing of the PIJ. According to Paragraph 32(e), PIJ used its record of acts of violence to solicit and raise funds for the PIJ. Thus, in a single conversation described in Overt Act 255 and Count Forty-Four, the purpose of defendant Fariz's conversation with the reporter was to complete the extortion by seeking a corrected claim of responsibility for the recent crime of violence, and to facilitate the future solicitation and raising of funds for the PIJ. Thus, through a common sense reading of the indictment as a whole, it is clear that the indictment informs defendant Fariz "how" this conversation allegedly furthered and facilitated extortion and money laundering.

Therefore, the United States respectfully requests that this court deny defendant Ballut's Motion to Dismiss or Strike Counts One through Four, Nineteen, Thirty-Six through Thirty-Eight and Forty through Forty-Two, and defendant Fariz's Motion to Dismiss Count Forty-Four, for the reasons discussed above.

Respectfully submitted,

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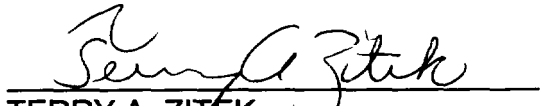
By: 
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I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. mail this 27th day of October, 2003, to the following:

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